

Dodd-Frank: Proposed Rules Issued Governing Incentive Compensation of Designated Executives

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Proposed rules were issued jointly by several federal agencies, to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act's prohibition on incentive-based compensation arrangements that encourage inappropriate risk taking by covered financial institutions and are deemed to be excessive or that may lead to material losses. Generally, the proposed rules apply to covered institutions, including national banks, state member banks, U.S. operations of a foreign bank with more than \$1 billion in assets, and others. The proposed rules clarify that incentive-based compensation is "excessive" if the amounts are unreasonable or disproportionate to the services performed. An incentive-based compensation arrangement will be considered to encourage "inappropriate risks" unless it balances risks and financial rewards, is compatible with effective controls and risk management, and is supported by strong corporate governance. Covered institutions with at least \$50 billion in assets must defer at least half of the incentive-based compensation of executive officers for at least three years and such deferred compensation must be adjusted to reflect actual losses or other measures of performance realized during the deferral period. These large institutions must also identify persons other than executive officers who have the ability to expose the institution to substantial losses, and any incentive-based compensation for such persons must meet certain requirements. Covered institutions must adopt certain policies and procedures with respect to implementation of incentive-based compensation arrangements, and are required to make an annual report that describes the structure of any incentive-based compensation arrangements; institutions with total assets of \$50 billion or more must provide additional information regarding arrangements applicable to executive officers and other covered persons. After comments are received, the final rule will be effective six months after publication, with annual reports due within 90 days after the end of the institution's fiscal year. The proposed rules can be found here: <http://www.fdic.gov/news/board/2011rule2.pdf>.